

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

ORDER	
Preserve at Crossroads, LP Appellant,	Docket No. 13-07-0903 Parcel No. 8813-02-126-018
v.	Docket No. 13-07-0904 Parcel No. 8813-02-126-019
Black Hawk County Board of Review, Appellee.	Docket No. 13-07-0905 Parcel No. 8813-02-126-021
	Docket No. 13-07-0906 Parcel No. 8813-02-126-022

On April 29, 2014, the above-captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The appeals were conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Loyd Ogle, Ogle Law Office, Des Moines, Iowa, represented Preserve at Crossroads, LP. Assistant County Attorney David Mason represented the Board of Review. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Preserve at Crossroads, LP, is the owner of four commercially classified parcels, two vacant lots and two improved properties, in Waterloo, Iowa. The improved properties are Section 42 apartment buildings, and one includes an office/clubhouse. Section 42 property is property that is leased or rented to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code. Section 42 limits the amount that the individual or family pays for the rental or lease of units in the property. Iowa Code § 441.21(2).

The real estate was assessed as follows for January 1, 2013:

Parcel	Legal	Description	2013 Assessed Value
8813-02-126-018	Lot 4	Vacant Lot (0.910 acres)	\$57,270
8813-02-126-019	Lot 1	4 apartment buildings (48 units) and Clubhouse/Office	\$1,127,290
8813-02-126-021	Lot 3	Vacant Lot (1.57 acres)	\$98,810
8813-02-126-022	Lot 2	4 apartment buildings (48 units)	\$1,108,090

Lot 1, located at 1415-1455 Oleson Road, has five buildings, including four twelve-unit apartment buildings and a clubhouse/office. Lot 2, located at 1416-1446 Oleson Road, also has four twelve-unit apartment buildings. Although Lots 1 and 2 are separate parcels, they operate as a single Section 42 housing complex with the same ownership. The record is not clear as to whether or how the two vacant lots are used as a part of the complex.

Crossroads protested its assessments to the Black Hawk County Board of Review on the ground that there was an error in the assessment under Iowa Code section 441.37(1)(a)(4). However, its error claim for all of the properties essentially asserted the properties were assessed for more than authorized by law under section 441.37(1)(a)(2). It further asserted the correct fair market value of Lots 3 and 4 was \$5000 each; Lot 1 was \$601,289; and Lot 2 was \$591,672. In addition, in a filing along with the Board of Review petition, Crossroads raised a claim the properties were inequitably assessed under section 441.37(1)(a)(1). The Board of Review denied the protests.

Crossroads then appealed to this Board.

Crossroads essentially asserts its land values are over assessed. It further asserts the valuation of the two vacant lots is in excess of the value that should have been determined using the Section 42 valuation method in Iowa Code section 441.21(2); and as a result of the allocation error, its improved lots are also over assessed. Crossroads also asserts its properties' land values are not equitable when compared to other Low-Income Housing Tax Credit (LIHTC) properties.

In a letter to the Board of Review, Crossroads submitted a list of five LIHTC properties in Waterloo, Iowa. Crossroads compared four of these properties' land assessments to the subject parcels in an effort to support its assertion the assessed land values of the subject parcels are incorrect.

Project	Land Size (SF)	Land Value	Land Value/SF
Stokes Estates	140,045	\$96,450	\$0.69
Stokes Manor	273,557	\$188,400	\$0.69
Roosevelt Senior	82,328	\$56,700	\$0.69
Rose of Waterloo	67,082	\$61,600	\$0.92
Subject Properties			
Lot 4	39,640	\$57,270	\$1.44
Lot 1	146,797	\$202,200	\$1.38
Lot 3	68,389	\$98,810	\$1.44
Lot 2	132,858	\$183,000	\$1.38

Based on this information, Crossroads asserts the subject sites are over-assessed and should be valued at \$0.69 per square foot. Using this analysis, it asserts the correct land values are as follows:

Subject Properties	Site Size	Correct Value
Lot 4	39,640	\$27,351
Lot 1	146,797	\$101,290
Lot 3	68,389	\$47,189
Lot 2	132,858	\$91,672

Black Hawk County Assessor TJ Koenigsfeld testified the properties Crossroads submitted are located in East Waterloo, which has a different market than the subject properties. Furthermore, even though Crossroads contends the correct value of the sites should be \$0.69 per-square-foot, it ultimately requests Lot 3 and 4 be valued at \$5000. This valuation would result in an assessed land value per-square-foot of \$0.07 for Lot 3 and \$0.12 for Lot 4. It provides no support for how it arrived at this conclusion.

Regarding vacant Lots 3 and 4, Crossroads also submitted the Land Use Restrictive Covenants Agreement for Low-Income Housing Tax Credit Program. Crossroads asserts this document demonstrates the existence of land use restrictions on the unimproved sites and that the assessment

does not properly consider these restrictions. It contends the properties cannot be built upon, nor can they be rented or sold, and thus must remain vacant for thirty years. The first page of the document refers to a 96-unit rental housing development located at 1455 Oleson Road, Waterloo, Iowa, identified as the “Project.” It is not clear if the Project also includes the vacant subject Lots 3 and 4; however, it may as the only reference to the properties subject to the agreement is a metes and bounds legal description.

Koenigsfeld noted the assessment of both Lot 3 and 4 are at a “platter’s price.” He explained that when the project was platted, the value of the original parcels was divided among the new lots under Iowa Code 441.72, and the value remains in effect for five years or until the lot is developed. Lots 3 and 4 will be valued at the “platter’s price” until January 1, 2019, unless they are improved before that date. (Exhibit A).

The improved properties, Lot 1 and 2, operate under common ownership and were built at the same time. The subject properties are Section 42 low-income housing, and the developer receives a federal tax credit. Koenigsfeld explained the valuation was based on the total value of the Section 42 income, which was then allocated to the land and building components. Koenigsfeld further noted the petitioner incorrectly completed the Section 42 form, which is required for the assessment of these types of property. Because this is a new development, there was only one reporting period (2012), whereas it is typical to use three years of income and expense data. On its form, Crossroads divided the income/expense data by three; however, it should not have done so and this resulted in an incorrect figure undervaluing the subject properties. Koenigsfeld noted Crossroads also did not use actual taxes, which were \$107,909 for the 2012 tax year. Lastly, Crossroads used an incorrect capitalization rate of 10.5%. The Department of Revenue provides a capitalization rate for 2013 of 10.46%, which is required for all Section 42 properties. The assessed value developed by the Assessor’s office and determined by the required income approach is \$2,235,380 (rounded). This value was allocated

between the two improved parcels, with a slightly larger allocation to Lot 1, which also has a clubhouse/office. Koenigsfeld explained that when allocating between the land and building, the land value allocation was kept equitable with surrounding sites.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

When assessing Section 42 property, the assessor shall value the property using “the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property.” § 441.21(2); *see also* Iowa Admin. Code r. 701-71.5(2). In an appeal alleging the property is assessed for more than the value authorized by law under section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property’s correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995).

Crossroads' claim essentially rests on three arguments. First, Crossroads argues the assessment overvalues the improved lots by failing to take into account the property's negative revenue generation. However, Crossroads' income approach for the improved Section 42 properties (Lots 1 and 2) included significant reporting errors and incorrectly calculates the property's net operating income. Although the administrative rules permit an Assessor to develop a normalized NOI using the prior three years of a properties' NOI results, it appears Crossroads' calculation divides a single year's NOI result by three and artificially lowers the normalized NOI. Iowa Admin. R. 701-71.5(2).

Second, Crossroads argues that the subject properties are inequitably assessed as compared to other LIHTC projects in Waterloo. To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Because of the unique valuation method of Section 42 housing and without further information about these other projects, we cannot find that the subject properties are inequitably assessed.

Lastly, Crossroads challenges the assessments of the vacant lots. Although not perfectly articulated, it appears to argue that the vacant lots are used as part of the Project and the properties should be valued as a whole. In addition, Crossroads believes the vacant lots, as part of the Section 42 project, are subject to use restrictions that impairs their market value.

The Assessor has some discretion to aggregate separately described tracts for valuation purposes. *Sevde v. Bd. of Review of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). Iowa Code section 428.7 states that "descriptions may be combined for assessment purposes to allow the assessor to value the property as a unit." As noted earlier, the record is unclear about whether or how the vacant lots are used in conjunction with the improved parcels. The record is insufficient for this Board to determine if the valuation of the improved properties under Iowa Code section 441.21(2) should have been allocated to the vacant lots.

We, therefore, find that the vacant lots are appropriately valued by the platting law. Iowa Code section 441.72(1-2) states:

when a subdivision plat is recorded pursuant to chapter 354, [...] the individual lots within the subdivision plat shall not be assessed in excess of the total assessment of the land as acreage or unimproved property for [five or] eight years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first.

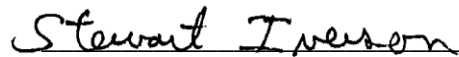
According to the record, these lots were platted and are vacant; therefore, the values determined under section 441.72(2) remain in effect until the parcels are improved or the time period expires.

THE APPEAL BOARD ORDERS the 2013 assessments of Lots 1, 2, 3, and 4, owned by the Preserve at Crossroads, LP, in Waterloo, Iowa, is affirmed.

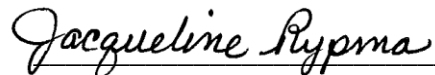
Dated this 13th day of June, 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

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